

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

IN RE MICROSOFT CORP. ANTITRUST
LITIGATION

This Document relates to:

Burst.com, Inc. v. Microsoft Corp.,
Civil Action No. JFM-02-cv-2952

MDL Docket No. 1332

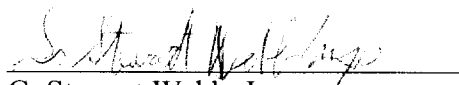
Hon J. Frederick Motz

**MICROSOFT'S MOTION FOR LEAVE TO FILE SUR-REPLY
IN OPPOSITION TO BURST'S MOTION FOR SPOILIATION INSTRUCTION,
WITNESS PRECLUSION, AND RELATED RELIEF**

Microsoft respectfully moves for leave to file the accompanying sur-reply in opposition to Burst's spoliation motion. Burst's reply introduced a large number of new allegations and arguments that could have, and should have, been included in Burst's original motion. Burst's reply consists of a 40-page brief, an 18-page appendix (which is essentially another brief), and 96 exhibits – more than twice as many as Burst included with its original 50-page motion. In fairness, Microsoft should be permitted to respond to this new material, and accordingly seeks leave to submit the accompanying sur-reply. Microsoft has discussed this motion with Burst. Burst stated that it wishes to review the sur-reply before determining whether it has an objection to Microsoft filing the sur-reply.

Respectfully submitted,

February 25, 2005


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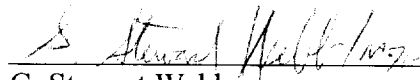
Attorneys for Defendant Microsoft Corporation

CERTIFICATE OF SERVICE

G. Stewart Webb, an attorney, hereby certifies that on February 25, 2005, he caused a true and correct copy of the following documents to be served on counsel for the plaintiff: (1) Microsoft's Motion For Leave To File Sur-Reply In Opposition To Burst's Motion For Spoliation Instruction, Witness Preclusion, and Related Relief; (2) Microsoft's Sur-reply In Opposition To Burst's Motion For Spoliation Instruction, Witness Preclusion, and Related Relief to be served upon the following counsel for the Plaintiff (Filed Under Seal); (3) Exhibit Index to Microsoft's Sur-reply In Opposition To Burst's Motion For Spoliation Instruction, Witness Preclusion, and Related Relief to be served upon the following counsel for the Plaintiff (Filed Under Seal); and (4) Exhibits 43-56 (filed under seal).

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